



County of San Bernardino

F A S

## CONTRACT TRANSMITTAL

### FOR COUNTY USE ONLY

E	<input checked="" type="checkbox"/>	New	Vendor Code			Dept.		Contract Number	
M	<input type="checkbox"/>	Change			SC		A		
X	<input type="checkbox"/>	Cancel							
County Department					Dept.	Orgn.	Contractor's License No.		
Economic and Community Development					ECD	ECD			
County Department Contract Representative					Ph. Ext.	Amount of Contract			
Thomas R. Laurin, Director					(909) 388-0808	N/A			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	Activity	GRC/PROJ/JOB Number			
SBW	ECD	ECD	200	2005					
Commodity Code				Estimated Payment Total by Fiscal Year					
				FY	Amount	I/D	FY	Amount	I/D
Project Name									
Barstow Business									
Loan Program -									

CONTRACTOR City of Barstow

Birth Date N/A Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative Dennis Dahlem, Redevelopment Manager

Address City of Barstow, 220 East Mountain View Street, Barstow, CA 92311 Phone (760) 256-3531

Nature of Contract: *(Briefly describe the general terms of the contract)*

This agreement provides for the City of Barstow to promote a Business Loan Program and underwrite loan within City limits. The Barstow Business loan Program will be funded through Community Development Block Grant (CDBG) funds. The City of Barstow will utilize up to \$500,000 of their future years allocation to guarantee the individual loans under the Cities Business Loan Program.

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form	Reviewed as to Affirmative Action	Reviewed for Processing
► _____	► _____	► _____
County Counsel		Agency Administrator/CAO
Date _____	Date _____	Date _____

# **CITY OF BARSTOW BUSINESS LOAN PROGRAM GUARANTY AND SECURITY AGREEMENT**

**THIS GUARANTY AND SECURITY AGREEMENT** ("Agreement") dated \_\_\_\_\_ by and between **City of Barstow**, (hereinafter referred to as "City"), and the **COUNTY OF SAN BERNARDINO**, (hereinafter referred to as "County").

**WHEREAS**, County agrees to make available and administer a loan program for businesses located in the City of Barstow under a program referred to as the City of Barstow Business Loan Program whose purpose is to provide economic opportunities to businesses located in the City of Barstow,

**WHEREAS**, City will act as a lender in the origination and processing of such loans.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

## **1. RECITALS**

- 1.1** The County and City have agreed that City will make available low interest loans for working capital or the financing of machinery and equipment or real estate improvements to businesses located in the City of Barstow (each a "Loan" and collectively the "Loans") under a program referred to as the "City of Barstow Business Loan Program" (hereinafter referred to as "Program"). The purpose of this Program is to strengthen the businesses in the City.
- 1.2** City has agreed to originate the loans. Each Loan made under the Program will be subject to prior approval by a Loan committee made up of a representative from the City and the County.
- 1.3** Each Loan shall be evidenced by a promissory note, loan agreement, security agreement (if applicable), and any other document, instrument or agreement required by City or County in connection with a Loan (collectively, "Loan Documents").
- 1.4** As a condition to making the Loans, County has required that the City guaranty the repayment of each of the Loans and secure such guaranty by pledging future community Development Block Grant funds (CDBG) in the amount of individual loans.

## **2. GUARANTY**

- 2.1** **Guaranty of Obligation.** The City hereby unconditionally, absolutely and irrevocably guarantees and promises to pay County, on order, on demand, in lawful money of the United States, any and all present or future principal and accrued but unpaid interest covering 90 days on such principal of a borrower of a Loan made under the Program (hereinafter referred to as "Borrower") owing to County arising under the Loan Documents evidencing the Loan to such Borrower (hereinafter referred to as "Obligations"). City obligations will be limited to the amount in outstanding principal accounts plus ninety (90) days interest.

**2.2 Assignment, Representations, and Warranties.** When County exercises its right to collect on a delinquent loan account, County shall assign promissory notes, Deeds of Trust and all rights County has against Borrower to City. City will then pay County the amount of the outstanding principal balance and ninety (90) days interest. For any Note, Deed of Trust, and right to other collateral (hereinafter referred to as "Documents") assigned by County to the City, the City represents and warrants the following:

- a. County is the sole owner of each Loan and all Documents and has the authority to sell, transfer, and assign such Documents on the terms herein set forth; and there has been no assignment, sale or hypothecation thereof by County.
- b. Such Loan is secured by the collateral described in the Individual Loan Agreements.
- c. The application Loan documents have been duly executed by the Borrower and acknowledged and recorded; and the Loan is valid and complies with all applicable lending laws and regulations.
- d. The Borrower has duly executed appropriate evidence indicating that the Borrower, has received the disclosure materials as required by applicable law and regulations.
- e. No part of the collateral has been released from the security for the Loan, and the terms of the Loan have in no way been changed or modified.
- f. There is in force a paid-up title insurance policy on the Loan or other documentary evidence affirming the quality and validity of County's lien securing the Loan.
- g. The assignment, if any, of the Loan from the County to City is valid and sufficient.
- h. All documents and signatures on said documents submitted are genuine, and all other representations as to each Loan are true and correct and meet the requirements and specifications of all parts of this Agreement.
- i. If required, there is in force such flood insurance policy as is required under the Flood Disaster Protection Act of 1973, as amended, and implementing and other regulations.
- j. The improvements on any real property securing each Loan are kept insured by hazard insurance policies issued by a company acceptable to City: (1) in an amount at least equal to the outstanding principal of the Loan, or the full insurable value of the improvements, whichever is less, (2) of a type substantially in the form of and at least as protective as the fire and extended coverage contained in the "New York" loss mortgage clause (also known as "standard" or "union" loss mortgage clause) and (3) containing suitable provisions for payment on all present and future Loans on the security property in order of precedence.

**2.3 Notice of Default.** Upon the occurrence of a default of any of the terms and conditions under a Loan, as determined by County in its sole and absolute discretion, County shall serve written notice of such default on the City with respect to such Loan ("Notice of Default"). A Notice of Default served in connection with a Loan shall constitute prima facie evidence of a default under such Loan. Notwithstanding the foregoing to the contrary, the commencement of any default under a Loan shall be the date such default actually occurred. In instances of default, City may give County authorization to debit the individual guarantee account for current month's payments of principal and interest to bring loan current. Authorization to the debit the guarantee account shall not constitute a waiver of Borrower's default with respect to the overdue amount, or prevent County from exercising any of the other rights and remedies available to County.

**2.4 Demand for Payment.** Following the forbearance period set forth in section 2.4.(a), County may make a demand for payment of the amounts guaranteed by the City pursuant to section 2.1 with respect to the Loan referenced in the Notice of Default ("Demand"). Within thirty (30) business days after the date the City receives a Demand, the City shall pay to the County the amount stated in such Demand.

**a. Forbearance by County:** Provided that no "Event of Default" (as hereinafter defined) shall have occurred and remain uncured, County agrees to forbear from serving a Demand or otherwise enforcing its rights under the Guaranty in connection with the occurrence of a default under a Loan for a period of thirty (30) days. No forbearance shall be required upon the appointment, whether voluntary or involuntary, of a receiver or liquidator for the Borrower under the provisions of the United States Bankruptcy Code.

**b. Limitation on Interest Payable Under the Guaranty:** Subject to the full satisfaction of each and all of the conditions set forth below, the amount of interest accrued on a Loan payable by the City under the Guaranty shall not exceed the amount of interest accrued on such Loan for a period of ninety (90) days. The foregoing limitations on interest payable by the City under the Guaranty shall be subject to the full satisfaction of each and all of the following conditions:

**i.** No Event of Default shall have occurred and remain uncured.

**ii.** County shall have not been prohibited, barred or stayed in any way from exercising its rights against the "Guaranty Collateral" (as hereinafter defined) as a result of legal process or otherwise, including without limitation court order, injunction, insolvency proceedings or receivership.

**2.5 Representations and Warranties.** To induce County to make the Loans, the City hereby represents and warrants to County as follows:

**a. Authority:** That the City has the requisite authority to enter into this Agreement, guaranty the Loans and pledge the Guaranty Collateral.

- b. **Interest in Making the Loans:** The City has a material interest in County making each Loan and has specifically induced County to do so in order to promote and achieve the objectives of the Program.

**2.6 Reliance by County.** The City hereby acknowledges and agrees that County is relying on the City's guaranty of the Loans and on representations and warranties made by the City in Section 2.5 in making the Loans.

**2.7 Scope of County's Authority.** The City hereby authorizes County hereunder, from time to time:

With the prior written consent of the City, to renew, compromise, extend, accelerate, or otherwise change the time for payment or the terms of any of the Loans, or any part thereof, including, without limitation, increasing or decreasing the rate of interest thereof;

**2.8 City's Duty to Investigate.** The City shall be informed of the financial condition of each Borrower and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations.

**2.9 Revival of Guaranty.** If any payments of money or transfers of property made to County by a Borrower, or other guarantor, any member or any endorser should for any reason subsequently be declared to be, or in County's Counsel's good faith opinion, be determined to be, fraudulent (within the meaning of any state or Federal law relating to fraudulent conveyances), preferential or otherwise voidable or recoverable in whole or in part for any reason (hereinafter collectively called "voidable transfer"), the City's liability hereunder shall automatically be revived, reinstated and restored and shall exist as though such voidable transfer had never been made to County. In the event County shall have assigned the Note and collateral to the City and County is subsequently required or advised by counsel to restore or repay any such voidable transfer, the amount thereof, or any portion thereof, the City shall remain liable as provided herein to the same extent as if the Note and collateral had not been assigned to the City.

### **3. SECURITY AGREEMENT**

**3.1 Grant of Security Interest.** To secure performance by the City of its obligations hereunder, the City hereby grants, transfers and assigns to County a security interest under the California Uniform Commercial Code ("UCC") in the Guaranty Collateral.

- a. **Definition of Guaranty Collateral:** For purposes of this Agreement, the term "Guaranty Collateral" shall mean each and all Accounts established and maintained by the City with County and listed on "Schedules" (as hereinafter defined) from time to time attached to this Agreement, together with any and all proceeds therein.

- b. **Definition of Schedule:** For purposes of this Agreement, the term "Schedule" shall mean each schedule attached to this Agreement in the form of Exhibit A attached hereto and incorporated herein by reference, and signed by the City, which schedule describes the pledge established by the City and pledged as collateral to secure the City's obligations hereunder, which Schedule identifies the Loan in connection with which the deposit account is established.

**3.2 Additional Instruments.** The City shall execute and deliver to County any documents, instruments or agreements required by County to evidence or perfect the security interest in the Guaranty Collateral granted herein including without limitation a financing statement form UCC-1.

**3.3 Events of Default.** For purposes of this Agreement, the term, "Event of Default" shall mean the occurrence of one or more of the following:

- a. The City fails to pay the amount set forth in a Demand within thirty (30) business days after the date the City receives such Demand.
- b. The City defaults in the due performance or observance of any term, provision, condition, covenant, warranty or representation contained in this agreement and such default is not cured within fifteen (15) business days after notice thereof is given to the City by County.
- c. Any representation or warranty made by the City to County shall prove to be false or misleading in any material respect, or if any such representation or warranty is withdrawn by the City.
- d. County is prohibited, barred or stayed in any way from exercising its rights against the Guaranty Collateral.
- e. A petition in Bankruptcy or for reorganization or for an arrangement or any composition, readjustment, liquidation, dissolution or similar relief pursuant to the Federal Bankruptcy Law or under similar present or future Federal or State Bankruptcy or insolvency law, is filed by or against the City, and such petition is not dismissed within 60 days, thereafter.
- f. A receiver, trustee or liquidator (or other similar official) is appointed for the City and is not discharged within 60 days thereafter.

**3.4 Rights and Remedies of County.** Upon the occurrence of and event of Default, County may, at its election, without notice and without demand, do any one or more of the following:

- a. **Foreclosure of Security Interest:** Foreclosure upon its security interest in all or in part of the Guaranty Collateral in an amount necessary to cure any default.
- b. County shall have no further obligation to make any loans.

- c. In addition to those set forth in this agreement, County may enforce its right under any applicable law

**3.5 No Effect on the City's Obligations.** The exercise by County of any of its rights and remedies hereunder shall not be construed in any way to release, forgive or in any way affect the City's guaranty of any remaining Loans or City's security interest in any remaining

**3.6 City's Agreement Regarding Foreclosure.** In the event the City fails to pay to County the amount set forth in a Demand within thirty (30) business days after receipt of such Demand, then:

- a. County shall foreclose upon its security interest in the CDBG funds pledged by the City in connection with the Loan that is the subject of such Demand, as indicated by the appropriate Schedule.
- b. County immediately shall commence foreclosure proceedings upon its security interest on all or part of the Guaranty Collateral (as may be required to cure any Event of Default) in accordance with the requirements and procedures of the UCC, provided that if for any reason beyond County's control County is unable to commence and complete such foreclosure proceedings within 90 days after the occurrence of the default under the Loan that is the subject of such Demand, the City shall be liable under the Guaranty for all amounts due under such Loan in accordance with Section 2.1.

**3.7 Release Guaranty Collateral.** County shall release security interest in Guaranty Collateral pledged by the City in connection with a Loan on demand within thirty (30) days after all amounts due under the Guaranty evidencing such Loan are paid in full, in accordance with Section 2.1 County shall further release its security interest in the Guaranty Collateral in the event that the City terminates this Guaranty pursuant to Section 6.13.

#### **4. DURATION OF GUARANTY AND SECURITY INTEREST**

**4.1 Guaranty.** The City's guaranty of the Loans shall remain in full force and effect so long as (1) any Loans remain unpaid or any Loans are being considered by County shall continue in full force and effect for ninety (90) days after the last Loan made under the Program has been repaid in full, or (2) until the guaranty is terminated pursuant to Section 6.13.

**4.2 Security Interest.** County security interest in Guaranty Collateral pledged by the City in connection with specific Loan shall remain in full force and effect so long as (1) such Loan remains unpaid, (2) until the Guaranty is terminated pursuant to Section 6.13.

## 5. GENERAL PROVISIONS

- 5.1 Indemnification.** Notwithstanding anything to the contrary herein contained and irrespective of any insurance carried by County, County shall indemnify, defend in any action or arbitration, and hold harmless City, authorized officers, agents, employees, and volunteers from any and all claims, damages, losses, actions and/or liability arising out of this Agreement caused by the acts, errors or omissions of any employee or agent of County and for any costs or expenses incurred by the City on account of any claim, therefore, except where such indemnification is prohibited by law. City shall promptly notify County in writing of the occurrence of such claims, actions, losses, damages, and/or liability.

County agrees to defend, indemnify and hold City harmless from any action, claim, liability, assessment or damage based on or in any way related to any breach by County of any representation or warranty or covenant of the County contained in the Agreement as required by the terms of this Agreement.

- 5.2 Notices.** All notices and demands hereunder shall be in writing and shall be deemed to have been given when actually received and receipted for, or when mailed by registered or certified mail, return receipt requested, postage prepaid and addressed in each case to the parties at the addresses set forth below. County or the City may change its address for giving notices or demands hereunder by written notice of such change to the other party in accordance with the provisions hereof. The notices shall be sent to the following addresses:

County of San Bernardino  
Economic and Community Development  
290 North 'D' Street, Sixth Floor  
San Bernardino, CA 92415-0040

City of Barstow  
220 East Mountain View Street  
Barstow, CA 92311-2888

- 5.3 Amendments.** This Agreement and attachments and any agreements, instruments or documents referred to herein constitute the entire agreement between County and the City regarding the subject matter hereof, and all prior and/or contemporaneous communications, verbal or written, between County and the City regarding the subject matter, hereof, shall be of no further effect or evidentiary value. This Agreement can be amended only by a written agreement executed by duly authorized representatives of County and the City.
- 5.4 Severability.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.
- 5.5 Article and Section Headings.** All article and section headings have been set forth herein for convenience of reference only, and shall not limit or affect the meaning or interpretation of any section hereof.
- 5.6 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successor and assigns of each of the parties.



- 5.7 Governing Law.** This Agreement and all other agreements and instruments required in connection herewith shall be governed by and construed in accordance with the laws of the State of California.
- 5.8 Counterpart Execution.** This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Agreement.
- 5.9 Attorney's Fees.** In the event any party to this Agreement shall be required to commence any action or proceeding against any other party be reason of any breach or claimed breach of any provision of this Agreement, to commence any action in any way connected with this Agreement, or to seek a judicial declaration of rights under this Agreement, the party prevailing in such action or proceeding shall be entitled to recover from the other party,, or parties, the prevailing party's reasonable attorney's fees and costs including, without limitation, all witness fees and associated expenses, including matters on appeal whether or not the proceeding or action proceeds to judgement.
- 5.10 Conflict of Interest.** No member, official or employee of City or County shall have any personal interest, direct or indirect, in the subject matter of this agreement or loans made by County, nor shall any such member, official or employee participate in any decision relating to Loan which affects his personal interest or the interests of any corporation, partnership or association in which he has an interest, whether directly or indirectly.
- 5.11 Discrimination.** No person shall on the grounds of race, sex, creed, color, religion, or national origin, be excluded from participating in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment supported by this Contract.
- 5.12 Audits.** County is required to arrange for an independent financial/compliance audit performed within the direction of Generally Accepted Auditing Standards and Government Auditing Standards. County shall submit a copy of the audit report to City within thirty (30) days of completion. Within thirty (30) days of the submittal of said audit report, County shall provide to City a written response to any concerns or findings identified in said audit report. The response must examine each concern or finding and explain a proposed resolution, including a schedule for correcting any deficiency. All actions to correct said conditions or findings shall be initiated within six (6) months after receipt of the audit report.

City or any State or Federal agency, may make additional audits or reviews, as necessary, to carry out the responsibilities of County under County, state or Federal laws and regulations. County agrees to cooperate fully with all persons conducting said additional audits or reviews. City and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to all books, documents, papers, records, property, and premises of County.

If indications of misappropriation or misapplication of the funds of this Agreement cause City to require an additional audit, the cost of the audit will be reimbursed by County. Should City subsequently determine that the additional audit was not warranted, costs will be returned to County. County shall reimburse all misappropriation or misapplied funds. County shall reimburse City legal fees and court costs in addition to awards.

**5.13 Assignment.** This Agreement is not assignable by County without the express written consent of City. Any attempt by County to assign any performance of the terms of this Agreement shall be null and void and shall constitute a material breach of this Agreement.

**5.14 Termination and Termination Costs.** This Agreement may be terminated in whole or in part at any time by either party upon giving their ten (10) day notice in writing to the other party. Agreement must be reached by both parties as to reasons and conditions for termination in compliance with the provisions of Federal regulations at 24 CFR Part 85.44, Termination for Convenience. County is hereby empowered to give said notice subject to ratification by the County Board of Supervisors.

County may immediately terminate this Agreement upon the termination, suspension, discontinuation or substantial reduction in CDBG funding for the Agreement activity or if for any reason the timely completion of the work under this Agreement is rendered improbable, infeasible or impossible. If City materially fails to comply with any term of this Agreement, County may take one or more of the actions provided under Federal Regulation at 24 CFR Part 85.43, Enforcement, which include temporarily withholding cash, disallowing non-compliant costs, wholly or partly terminating the award, withholding future awards, and other remedies that are legally available. In such event, County shall be compensated for services rendered and all necessarily incurred costs performed in good faith in accordance with the terms of this Agreement, to the date of said termination.

**IN WITNESS THEREOF**, the parties hereto have each caused **AGREEMENT** to be dully executed as of the day and the year first written above.

**COUNTY OF SAN BERNARDINO**

County of San Bernardino

Department of Economic  
and Community Development  
290 North 'D' Street, Sixth Floor  
San Bernardino, CA 92415-0040

**CITY**

City of Barstow  
220 East Mountain View Street  
Barstow, CA 92311-2888

**COUNTY OF SAN BERNARDINO**

**CITY OF BARSTOW**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Paul M. Warner, City Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

Alan K. Marks

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**SIGNED AND CERTIFIED THAT A  
COPY OF THIS DOCUMENT HAS  
BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD**

EARLENE SPROAT  
Clerk of the Board of Supervisors  
Of the County of San Bernardino

By: \_\_\_\_\_

Dated: \_\_\_\_\_